

R. HUNTER BITNER, II, OSB NO. 011146

hunter@slindenelson.com

SLINDE NELSON STANFORD

111 SW Fifth Avenue, Suite 1940

Portland, OR 97204

Telephone: (503) 417-7777

Fax: (503) 417-4250

Attorney for Plaintiffs

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Debtors.

DWIGHT and LAURA DANIELS,
husband and wife,

Plaintiffs,

v.

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Defendants.

Case No. 14-35381-rld7

Adversary Proceeding No. 14-03285-rld

**PLAINTIFFS' MOTION FOR COSTS
AND ATTORNEY'S FEES REGARDING
DEFENDANTS' FAILURE TO ADMIT**

Plaintiffs move the Court to be awarded their reasonable attorney's fees concerning requests for admissions that were denied and proven true. This Motion is supported by FRCP 37(c)(2), Plaintiffs' Requests for Admissions to Defendants and their responses thereto, the Declaration of R. Hunter Bitner, II in support thereof and Plaintiffs' supporting Memorandum.

////

////

////

Based on the foregoing, and the Memorandum, numerous denials made by Defendants to Plaintiffs' Requests for Admissions were proven to be inaccurate at trial. Plaintiffs were forced to go forward and establish proof of each of the information contained in the requests at issue. As the matters have been proven true, Plaintiffs now request the Court to order Defendants to pay their reasonable expenses, including attorney's fees incurred in making that proof.

DATED: October 20, 2015.

SLINDE NELSON STANFORD

By: /s/ R. Hunter Bitner, II

R. Hunter Bitner, II, OSB No. 011146
Darian A. Stanford, OSB No. 994491
*Of Attorneys for Dwight and Laura
Daniels*

CERTIFICATE OF SERVICE

I hereby certify that I served the attached **PLAINTIFFS' MOTION FOR COSTS AND ATTORNEY'S FEES REGARDING DEFENDANTS' FAILURE TO ADMIT** on the following person(s) on the date indicated below:

Paul B. Heatherman
Law Offices of Paul Heatherman PC
250 NW Franklin Ave, #402
Bend, OR 97701
Of Attorneys for Debtors-Defendants

By the following indicated method(s):

- By **emailing** full, true, and correct copies thereof to say attorney to the email address noted above, which is the last known email address for said attorney, on the date set forth below.
- By notice of electronic filing using the PACER ECF filing system.
- By causing full, true and correct copies thereof to be **mailed** to the attorney(s) at the attorney(s) last-known office address (as) listed above on the date set forth below.

DATED: October 20, 2015.

SLINDE NELSON STANFORD

By: /s/ R. Hunter Bitner, II
R. Hunter Bitner II, OSB No. 011146
Darian A. Stanford, OSB No. 994491
Of Attorneys for Dwight and Laura Daniels

R. HUNTER BITNER, II, OSB NO. 011146

hunter@slindenelson.com

SLINDE NELSON STANFORD

111 SW Fifth Avenue, Suite 1940

Portland, OR 97204

Telephone: (503) 417-7777

Fax: (503) 417-4250

Attorney for Plaintiffs

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Debtors.

DWIGHT and LAURA DANIELS,
husband and wife,

Plaintiffs,

v.

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Defendants.

Case No. 14-35381-rld7

Adversary Proceeding No. 14-03285-rld

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR COSTS
AND ATTORNEY'S FEES REGARDING
DEFENDANTS' FAILURE TO ADMIT**

Plaintiffs have moved the Court to be awarded their attorney's fees concerning requests for admissions that were originally denied and proven true. This Memorandum supports that Motion.

STANDARD

FRCP 36(a)(4) states in pertinent part:

If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. *** the answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information knows or can readily obtain this insufficient to enable it to admit or deny.

FRCP 37(c)(2) states in pertinent part:

If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof.

APPLICATION

In this matter, Plaintiffs propounded Requests for Admissions pursuant to FRCP 36 to Defendants. In response, Plaintiffs received the following responses:

REQUEST FOR ADMISSION NO. 1: Admit that you represented to Plaintiffs that your personal residence at 26280 Milk Creek Circle was worth \$775,000 in February 2011.

RESPONSE: James Holman ADMITS; Candice Holman DENIES.

REQUEST FOR ADMISSION NO. 2: Admit that you represented to Plaintiffs that you owed \$450,000 on the Defendant's personal residence at 26280 Milk Creek Circle in February 2011.

RESPONSE: James Holman ADMITS; Candice Holman DENIES.

REQUEST FOR ADMISSION NO. 3: Admit that the UCC-1, attached hereto as Exhibit 1, was filed with the Oregon Secretary of State on behalf of you on February 25, 2011.

RESPONSE: DENY

REQUEST FOR ADMISSION NO. 4: Admit that the UCC-1 form, attached hereto as Exhibit 1, was terminated on August 18, 2011.

RESPONSE: DENY

REQUEST FOR ADMISSION NO. 6: Admit that the UCC-1, attached hereto as Exhibit 1, was terminated by your attorney, Todd Mitchell.

RESPONSE: DENY

REQUEST FOR ADMISSION NO. 7: Admit that you never gave notice to either of the two Plaintiffs of the termination of UCC-1, attached hereto as Exhibit 1.

RESPONSE: James Holman ADMITS; Candice Holman DENIES.

REQUEST FOR ADMISSION NO. 8: Admit that as the time you created your "Personal Financial Statement" in February 2011 there were two mortgages on the personal residence at 26280 Milk Creek Circle.

RESPONSE: James Holman ADMITS; Candice Holman DENIES.

REQUEST FOR ADMISSION NO. 10: Admit that you did not have the residence at 26280 Milk Creek Circle appraised to determine its value in preparing the Personal Financial Statement.

RESPONSE: James Holman ADMITS; Candice Holman DENIES.

REQUEST FOR ADMISSION NO. 13: Admit that as of the time of you preparing the Personal Financial Statement of February 2011 you had a mortgage balance in excess of \$450,000.

RESPONSE: James Holman ADMITS; Candice Holman DENIES.

See Defendants' Responses to Plaintiffs' Requests for Admission attached as an Exhibit 1 to the Declaration of R. Hunter Bitner, II.

Concerning requests numbers 1, 2, 7, 8, 10, and 13, Defendant James Holman admitted each whereas Candice Holman denied each. It should be emphasized that Mrs. Holman did not note that she did not have adequate information and did not know the answer, rather, she denied the requests. Each of Mrs. Holman's denials have been proven to be inaccurate and there is no question of the truth of each of the requests. See Trial Transcript, August 13, 2015 p. 261, l. 13 – p. 263, l. 4.

Turning to Mr. Holman's denials, there is no question that the UCC-1 was filed with the Oregon Secretary of State on behalf of Mr. Holman on February 25, 2011. Additionally, that same UCC-1 was unequivocally terminated on August 18, 2011 and Plaintiffs established that the UCC-1 was in fact terminated by Todd Mitchell. Therefore, Mr. Holman's denials have been established to be inaccurate. See Trial Transcript, p. 186, ll. 5 – 7; p. 191, l. 15 – p. 192, l. 15; p. 201, ll. 15 – 19; p. 208, ll. 5 – 9; p. 218, l. 25 – p. 221, l. 6; Plaintiffs' Exhibit 9 – UCC-3 Termination of UCC-1 Financing Statement, filed August 18, 2011; see also Deposition of James

Holman taken on July 7, 2015 p. 132, l. 25 – p. 134, l. 5. At no point did Mr. Holman say that he had inadequate information to respond; rather, he simply denied the requests.

Based on the foregoing, each of the denials at issue were proven to be inaccurate at trial. See Memorandum Opinion, pp. 6, 7. Plaintiffs were forced to go forward and establish the proof regarding the information contained in each request. Additionally, counsel for Plaintiffs made it clear to counsel for Defendants that they would be doing so and relying upon that information. See Exhibit 2 to the Declaration of R. Hunter Bitner, II. Defendants decided not to amend their responses.

As the matters have been unequivocally proven true, Plaintiffs now request the Court to order Defendants to pay the reasonable expenses, including attorney's fees incurred in making that proof.

DATED: October 20, 2015.

SLINDE NELSON STANFORD

By: /s/ R. Hunter Bitner, II
R. Hunter Bitner, II, OSB No. 011146
Darian A. Stanford, OSB No. 994491
*Of Attorneys for Dwight and Laura
Daniels*

CERTIFICATE OF SERVICE

I hereby certify that I served the attached **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR COSTS AND ATTORNEY'S FEES REGARDING DEFENDANTS' FAILURE TO ADMIT** on the following person(s) on the date indicated below:

Paul B. Heatherman
Law Offices of Paul Heatherman PC
250 NW Franklin Ave, #402
Bend, OR 97701
Of Attorneys for Debtors-Defendants

By the following indicated method(s):

- By **emailing** full, true, and correct copies thereof to say attorney to the email address noted above, which is the last known email address for said attorney, on the date set forth below.
- By notice of electronic filing using the PACER ECF filing system.
- By causing full, true and correct copies thereof to be **mailed** to the attorney(s) at the attorney(s) last-known office address (as) listed above on the date set forth below.

DATED: October 20, 2015.

SLINDE NELSON STANFORD

By: /s/ R. Hunter Bitner, II
R. Hunter Bitner II, OSB No. 011146
Darian A. Stanford, OSB No. 994491
Of Attorneys for Dwight and Laura Daniels

R. HUNTER BITNER, II, OSB NO. 011146

hunter@slindenelson.com

SLINDE NELSON STANFORD

111 SW Fifth Avenue, Suite 1940

Portland, OR 97204

Telephone: (503) 417-7777

Fax: (503) 417-4250

Attorney for Plaintiffs

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Debtors.

DWIGHT and LAURA DANIELS,
husband and wife,

Plaintiffs,

v.

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Defendants.

Case No. 14-35381-rld7

Adversary Proceeding No. 14-03285-rld

**DECLARATION OF R. HUNTER
BITNER, II IN SUPPORT OF
PLAINTIFFS' MOTION FOR COSTS
AND ATTORNEY'S FEES REGARDING
FAILURE TO ADMIT**

I, R. Hunter Bitner, II, declare the following:

1. I am one of the attorneys representing Dwight Daniels and Laura Daniels, Plaintiffs, in the above captioned lawsuit.

2. I make this Declaration in Support of Plaintiff's Motion for Costs and Attorney's Fees Regarding Failure to Admit.

3. Attached hereto as Exhibit 1 is a true and accurate copy of Defendants' Responses to Plaintiffs' Requests for Admission.

4. Attached hereto as Exhibit 2 is a letter from the undersigned to counsel for
Page 1 DECLARATION OF R. HUNTER BITNER, II IN
SUPPORT OF PLAINTIFFS' MOTION FOR COSTS
AND ATTORNEY'S FEES REGARDING FAILURE TO
ADMIT

SLINDE NELSON STANFORD
111 SW 5th Avenue, Suite 1940
Portland, Oregon 97204
p. 503.417.7777; f. 503.417.4250

Defendants, Paul B. Heatherman, dated May 5, 2015.

5. Attached hereto as Exhibit 3, are true and accurate copies of portions of the trial testimony from August 13, 2015.

6. Attached hereto as Exhibit 4 are true and accurate copies of the deposition testimony of James Holman taken on July 7, 2015.

I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY OF PURJURY.

DATED: October 20, 2015.

SLINDE NELSON STANFORD

By: 

R. Hunter Bitner, II, OSB No. 011146
*Of Attorneys for Dwight and Laura
Daniels*

1
2
3
4
5
6
7
8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF OREGON

10 *In re*

11 JAMES JOEL HOLMAN and CANDICE
12 EVANGELINE HOLMAN,

13 Debtors.

Case No. 14-35381-rld7

14 DWIGHT and LAURA DANIELS,
15 husband and wife,

16 Plaintiffs,

Adversary Proceeding No. 14-03285-rld
**DEFENDANTS' RESPONSE TO
PLAINTIFFS' FIRST REQUEST FOR
ADMISSIONS TO DEFENDANTS**

v.

17 JAMES JOEL HOLMAN and CANDICE
18 EVANGELINE HOLMAN,

19 Defendants.

20 Pursuant to Federal Rules of Civil Procedure 36, Plaintiffs Dwight and Laura
21 Daniels hereby demand that Defendants James Joel Holman and Candice Evangeline Holman
22 respond to the following requests for admissions, within thirty (30) days of service of the same.
23 Failure to serve a written answer or objection within the time allowed by FRCP 36 will result in
24 admission of the following requests.

25 **DEFENDANTS' RESPONSE TO**
26 Page 1 - PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS
 TO DEFENDANTS

SLINDE NELSON STANFORD
111 SW 5th Avenue, Suite 1940
Portland, Oregon 97204
p. 503.417.7777; f. 503.417.4250

EXHIBIT 1

INSTRUCTIONS

1. Each discovery request is to be answered separately and as completely as possible. That fact that discovery is not complete shall not be used as an excuse for failure to answer as fully as possible.
 2. If you cannot supply precise information, you are required to state your best estimate or approximation of such information. You shall specify your inability to answer all or any portion of any discovery request and shall state whatever information or knowledge is available to you concerning the answered discovery request.
 3. To the extent you content in your response to any discovery request that any portion of the information or documents sought is privileged, irrelevant, not required to be produced in discovery and/or otherwise not the proper subject of a response by you, you must fully answer such part or aspect of the discovery request or respond to such portion of the request to which no objection is made and shall consider the various parts and aspects of such discovery request as being severable for that purpose.
 4. If any objection is made to any discovery request, state the basis for the objection. If you do not answer or produce a document because of a claim of privilege, set forth the privilege claimed, the facts upon which you rely to support the claim of privilege and identify each document (by date, title, subject matter, author, and the name and address of every person to whom the document was distributed) for which each such privilege is claimed.
 5. The discovery requests are continuing. Pursuant to FRCP 26(c), the responses to the discovery requests set forth below are to be supplemented through the date of trial.

DEFENDANTS' RESPONSE TO

**DEFENDANTS' RESPONSE TO
PAGE 2 - PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS
TO DEFENDANTS**

SLINDE NELSON STANFORD
111 SW 5th Avenue, Suite 1940
Portland, Oregon 97204
p. 503.417.7777; f. 503.417.4250

EXHIBIT 1

1

2 **REQUESTS FOR ADMISSIONS**

3 **REQUEST FOR ADMISSION NO. 1:** Admit that you represented to Plaintiffs that your
4 personal residence at 26280 Milk Creek Circle was worth \$775,000 in February 2011.

5 **RESPONSE:** James Holman ADMITS; Candice Holman DENIES.

6 **REQUEST FOR ADMISSION NO. 2:** Admit that you represented to Plaintiffs that you
7 owed \$450,000 on the Defendant's personal residence at 26280 Milk Creek Circle in February
8 2011.

9 **RESPONSE:** James Holman ADMITS; Candice Holman DENIES.

10 **REQUEST FOR ADMISSION NO. 3:** Admit that the UCC-1, attached hereto as Exhibit
11 1, was filed with the Oregon Secretary of State on behalf of you on February 25, 2011.

12 **RESPONSE:** DENY

13 **REQUEST FOR ADMISSION NO. 4:** Admit that the UCC-1 form, attached hereto as
14 Exhibit 1, was terminated on August 18, 2011.

15 **RESPONSE:** DENY

16 **REQUEST FOR ADMISSION NO. 5:** Admit that you instructed and/or authorized the
17 termination of the UCC-1, attached hereto as Exhibit 1.

18 **RESPONSE:** DENY

19 **REQUEST FOR ADMISSION NO. 6:** Admit that the UCC-1, attached hereto as Exhibit
20 1, was terminated by your attorney, Todd Mitchell.

21 **RESPONSE:** DENY

22 **REQUEST FOR ADMISSION NO. 7:** Admit that you never gave notice to either of the
23 two Plaintiffs of the termination of UCC-1, attached hereto as Exhibit 1.

24 **RESPONSE:** James Holman ADMITS; Candice Holman DENIES.

25 **DEFENDANTS' RESPONSE TO**
26 Page 3 -- PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS
TO DEFENDANTS

SLINDE NELSON STANFORD
111 SW 5th Avenue, Suite 1940
Portland, Oregon 97204
p. 503.417.7777; f. 503.417.4250

EXHIBIT 1

1 **REQUEST FOR ADMISSION NO. 8:** Admit that as the time you created your "Personal
2 Financial Statement" in February 2011 there were two mortgages on the personal residence at
3 26280 Milk Creek Circle.

4 **RESPONSE:** James Holman ADMITS; Candice Holman DENIES.

5 **REQUEST FOR ADMISSION NO. 9:** Admit that the second mortgage on the residence
6 at 26280 Milk Creek Circle was not disclosed on the Personal Financial Statement given to the
7 Plaintiffs.

8 **RESPONSE:** DENY

9 **REQUEST FOR ADMISSION NO. 10:** Admit that you did not have the residence at
10 26280 Milk Creek Circle appraised to determine its value in preparing the Personal Financial
11 Statement.

12 **RESPONSE:** James Holman ADMITS; Candice Holman DENIES.

13 **REQUEST FOR ADMISSION NO. 11:** Admit that you intended Plaintiffs to rely upon
14 the representations made in your Personal Financial Statement in connection with the loan at issue.

15 **RESPONSE:** DENY

16 **REQUEST FOR ADMISSION NO. 12:** Admit that as of the time of the preparation of
17 the Personal Financial Statement of February 2011 you did not have equity of \$325,000 in the
18 home.

19 **RESPONSE:** DENY

20 **REQUEST FOR ADMISSION NO. 13:** Admit that as of the time of you preparing the
21 Personal Financial Statement of February 2011 you had a mortgage balance in excess of \$450,000.

22 **RESPONSE:** James Holman ADMITS; Candice Holman DENIES.

23
24
25 **DEFENDANTS' RESPONSE TO**
26 Page 4 – PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS
 TO DEFENDANTS

SIINDE NELSON STANFORD
111 SW 5th Avenue, Suite 1940
Portland, Oregon 97204
p. 503 417 7777, f. 503 417 4250

EXHIBIT 1

1 DATED this 17th day of March, 2015.

2 SLINDE NELSON STANFORD

3 By: 

4 R. Hunter Bitner, II, OSB No. 011146

5 *Of Attorneys for Dwight and Laura
Daniels*

25 DEFENDANTS' RESPONSE TO
26 Page 5 – PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS
TO DEFENDANTS

SLINDE NELSON STANFORD
111 SW 5th Avenue, Suite 1940
Portland, Oregon 97204
p. 503.417.7777; f. 503.417.4250

EXHIBIT 1

State of Oregon
Corporation Division - UCC
Public Service Building - 255 Capitol Street NE, Suite 151
Salem, OR 97310-1327
(503) 986-2200 Facsimile (503) 373-1166

MAR 03 2011

ACKNOWLEDGMENT NOTICE

SCANNED
2490-4

BULLIVANT HOUSER BAILEY PC
ATTN TODD MITCHELL
805 BROADWAY ST STE 400
VANCOUVER, WA 98660

File Number: 8730073
File Date: 02/25/2011
Exp. Date: 02/25/2016
Entered By: thejoh
Doc Type: UCC
New Filing

Your document was filed showing the file number and date listed above.

If you have any questions regarding this notice, contact the Secretary of State, Corporation Division. Please refer to the file number listed above.

Note: You can access our records or filing forms through the Internet at the address:

<http://www.ucc.sos.state.or.us>

Secured party of record name(s) and address(es)

Individual: DANIELS, DWIGHT E.
23 CARMEL BAY DRIVE
CORONA DEL MAR, CA 92625

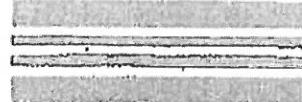
Debtor name(s) and address(es)

Organization: PACIFIC COURIER SERVICES, LLC
12434 SE CAPPS RD.
CLACKAMAS, OR 97015

Ex. 1

State of Oregon
Initial Filing 1 Page(s)

8730073
02/26/11 01:23 PM
OR Sec. of State



UCC FINANCING STATEMENT
ITEM 1A. NAME OF BORROWER OR LENDER/SECURED PARTY
A NAME & TITLE OF CONTACT AT PLEI
Todd Mitchell

B. ADDRESS OF BORROWER/SECURED PARTY (MAIL OR BUSINESS)

Todd Mitchell
Bullivant Houser Bailey PC
805 Broadway Street, Suite 400
Vancouver, WA 98660

1. DEBTOR EXACT FULL LEGAL NAME - Item 1a above (If not a person) - OR - DEBTOR'S TRADE NAME

OR
Pacific Course Services, LLC
DEBTOR'S TRADE NAME

1. BORROWER ADDRESS
12434 815 Capise Rd.
STATE
Oregon
ZIP CODE
97021-9010

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Item 1a above (If not a person) - OR - DEBTOR'S TRADE NAME

OR
DEBTOR'S TRADE NAME

1. BORROWER ADDRESS
12434 815 Capise Rd.
STATE
Oregon
ZIP CODE
97021-9010

3. SECURED PARTY'S NAME & TITLE, TOTAL AMOUNT OF ACCOUNTS OR LOANS AND SECURITY AGREEMENTS

OR
SECURED PARTY'S NAME
Daniels
DEBTOR'S TRADE NAME
23 Capitel Bay Drive
HELTRESS
Dwight
STATE
Corona Del Mar
CA
ZIP CODE
92625

4. THE FOLLOWING INFORMATION FROM THE FOLLOWING SECTION

Inventory, Equipment, accounts receivables, deposit accounts, intangibles, general intangibles

5. ANNOTATE THE FOLLOWING CHECK BOXES

6. THIS FINANCING STATEMENT IS TO BE USED IN CONJUNCTION WITH THE REAL ESTATE RECORDS

7. THIS FINANCING STATEMENT IS NOT FOR RECORDS

8. OFFICIAL FILE NUMBER/FILE DATA

401 PLAIN ENGLISH COPY — NATIONAL UCC FINANCING STATEMENT (FORM NO. 9-14 REV. 8/10)

02/28/2011 FBI 11:52 (TX/RX NO 8891) 001

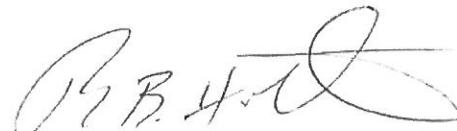
EXHIBIT 1

1
2
3 **CERTIFICATE OF SERVICE**
4 Adversary Proceeding No. 14-03285-rld
5
6
7
8

9 I hereby certify that on April 16, 2015, I serve a true copy of the foregoing *Defendants'*
10 *Response to Plaintiff's First Request for Admissions to Defendants*, via first class mail, and email,
11 to the following:

12 Darian A. Stanford
13 Slinde Nelson Stanford
14 111 SW 5th Ave., Ste 1940
15 Portland, OR 97204
16 Email: darian@slidenelson.com
17 Attorney for Plaintiffs

18 Dated: April 16, 2015.

19 
20 Paul B. Heatherman - OSB #933000
21 Attorney for Defendants/Debtors

22
23
24
25
26
27
28 Law Office of
 Paul Heatherman PC
 250 NW Franklin Ave. #402
 Bend, OR 97701
 Phone: 541-389-1010
 Fax: 541-382-6875
 Email: paul@bendattorneys.com

EXHIBIT 1

May 5, 2015

Via Email and U.S. Mail

Paul B. Heatherman
Law Offices of Paul Heatherman PC
250 NW Franklin Avenue, #402
Bend, OR 97701

Re: *Daniels v. Holman, USBC No. 14-35381-rld7*

Dear Paul:

We are in receipt of Plaintiff's responses to our Requests for Admission and Interrogatories. However, we are still missing the Plaintiff's response to our Request for Production and Plaintiff's production. Therefore, we are in the process of drafting a motion to compel. Additionally, we will be drafting a Motion to Compel that your answer to Interrogatory No. 9, "Refer to your exhibit" is not an adequate response to that interrogatory.

Turning to Defendant's responses to our Requests for Admission, there are multiple problems with the responses and this letter will give notice that pursuant to FRCP 37(C)(2) we intend on seeking fees regarding your responses.

For example, in your response to Requests for Admission Nos. 1, 2, 7, 8, and 13, James Holman admits the response and Candice Holman denies. Frankly, this is an illogical possibility. Mrs. Holman has the same duty to investigate and has access to the same information that Mr. Holman does. Therefore, one cannot admit while the other denies.

We are also unclear regarding your response to Request for Admission No. 3 where we asked you to admit that the UCC-1 was filed with the Oregon Secretary of State on the Holman's behalf on February 25, 2011. We know the date is correct. Therefore, we are unsure why you are denying that request. Is it your position that the UCC-1 was not filed on behalf of the Holmans?

Even more puzzling is your response to Request for Admission No. 4 in which you denied that the UCC-1 was terminated on August 18, 2011. The date of the termination is clear.

Just as puzzling is your response to Request for Admission No. 6 in which your client specifically denies that the UCC-1 was terminated by Todd Mitchell but when asked who terminated the UCC-1 you state "refer to your exhibit". The only way your clients could specifically deny that request is if they knew someone else had terminated it. However, you refuse to identify whomever that person is.

We further plan on seeking fees on your response to Request for Admission No. 9 in which you

EXHIBIT 2

Mr. Paul Heatherman

May 5, 2015

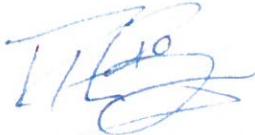
Page 2

deny that the second mortgage on the residence was not disclosed on the Personal Financial Statement. In fact, only one mortgagor is disclosed on the PFS.

The same goes for Request for Admission No. 12. Pursuant to your responses to the interrogatories, you have rendered that response an impossibility.

I am sure you disagree with most if not all of the foregoing. However, this letter is to simply give notice of our plans to seek fees on these responses.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "R. Hunter Bitner, II".

R. Hunter Bitner, II

RHB/klw
cc: Client

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re:)
JAMES JOEL HOLMAN and CANDICE) Case No. 14-35381-rld7
EVANGELINE HOLMAN,)
Debtors.)
DWIGHT and LAURA DANIELS,) Adversary Proceeding
husband and wife,) No. 14-03285-rld
Plaintiffs,)
v.)
JAMES JOEL HOLMAN and CANDICE)
EVANGELINE HOLMAN,)
Defendants.)

TRANSCRIPT OF PROCEEDINGS

VOLUME I of II

Before the Honorable Randall C. Dunn

Thursday, August 13, 2015

Hilton Garden Inn

Bend, Oregon

8:49 a.m.

REPORTED BY: Alane R. Harrold, RPR, CSR

HARROLD COURT REPORTING SERVICE (541) 771-8251

EXHIBIT 3

1 APPEARANCES

2 For the Plaintiffs:

3 R. Hunter Bitner
4 SLINDE NELSON STANFORD
5 111 S.W. 5th Avenue
6 Suite 1940
7 Portland, Oregon 97204

8 For the Debtor/Defendants:

9 Paul B. Heatherman
10 LAW OFFICE OF
11 PAUL HEATHERMAN, P.C.
12 250 N.W. Franklin Avenue
13 Suite 402
14 Bend, Oregon 97701

15

16

17

18

19

20

21

22

23

24

25

HARROLD COURT REPORTING SERVICE (541) 771-8251

EXHIBIT 3

1 A. Yes.

2 Q. So would you agree with me that PCS paid for
3 the acknowledgment, the filing?

4 A. I don't know. Seems logical, though.

5 Q. So you were aware as of March 16, 2011, that
6 the UCC-1 had been filed, correct?

7 A. It appears so, yes.

8 Q. Go to Exhibit 4 for me.

9 That's the Promissory Note, right?

10 A. Yes.

11 Q. That Promissory Note is signed by you and
12 your wife, right?

13 A. Yes,

14 Q. Why did both of you sign it?

15 A. Because in this Promissory Note, the loan was
16 to both of us.

17 Q. It specifically addresses putting up your
18 home in Mulino as security, right?

19 A. Yeah, I'm sure it does.

20 Q. Feel free.

21 A. If you could point it out to me.

22 THE COURT: It's on page 2, paragraph 4.

23 THE WITNESS: Yes, but I don't see the
24 Exhibit 1.

25 BY MR. BITNER:

1 insurance assignment, a separate security agreement?

2 A. Not that I recall. I don't know -- I don't
3 recall when he requested it. I know that there
4 was -- it didn't get done until well after the fact.
5 I don't know when he initially requested it. It was
6 kind of an "Oh, by the way" type thing.

7 Q. Did he ask it prior to sending the loan
8 payment?

9 A. I don't recall either way.

10 Q. You had filed a UCC-1? You had filed a UCC-1
11 with the secretary of state on February 25, 2011.

12 Was that not secured?

13 A. Say that one more time, sir.

14 Q. I'll back up.

15 A UCC-1 had been filed showing interest in
16 business assets on February 25, 2011. You agree with
17 that?

18 A. Yes.

19 Q. You forwarded that via e-mail to Mr. Daniels
20 on February 25, correct? That's Exhibit 7.

21 A. Yes.

22 Q. You then just under a month later sent him
23 the acknowledgment of the filing of the UCC-1,
24 correct?

25 A. Yes. That was in March.

1 Q. Right.

2 A. Yes.

3 Q. Exhibit 17. But you didn't believe --

4 THE COURT: Let's not do it as a negative.

5 Ask your question as of the time the loan was made

6 what his understanding was of the effect of the

7 UCC-1.

8 MR. BITNER: What the judge said.

9 THE WITNESS: As of the time the loan was
10 made, my understanding of what a UCC-1 would be
11 would be a form -- the way I recall generally
12 explaining it to Dwight would be a form of
13 collateral subordinate to a primary lender that
14 they could utilize if they're going to loan the
15 money to the business.

16 THE COURT: All right. Well, no, no. It was
17 signed. No. That's -- you've changed it.

18 What was your understanding of the filing of
19 the UCC-1 as of February 25 of 2011?

20 THE WITNESS: I don't -- I'm not sure how I
21 changed it. My understanding is that's what a UCC
22 does. That's was my understanding then.

23 THE COURT: What does it do?

24 THE WITNESS: It puts the lender -- whoever
25 gets the UCC, the lender, gives them collateral is

1 testimony.

2 THE COURT: No. And this is an entirely
3 separate issue, but the question is what he knew
4 about what you do to create such a security
5 interest.

6 MR. HEATHERMAN: Then versus now.

7 THE COURT: At the time then.

8 THE WITNESS: Todd and I never talked about
9 everything you just said. I didn't know any of
10 that then. I learned about it from Steve --
11 currently is when I learned about this thing from
12 Paul.

13 THE COURT: Okay. You may proceed.

14 BY MR. BITNER:

15 Q. Did you ask Mr. Mitchell to file the UCC-1?

16 A. I don't recall specifically asking him to,
17 but it seems like, again, logically he would have at
18 my request. I mean -- again, but I don't recall
19 specifically.

20 Q. Take me to Exhibit 8, please.

21 A. (Complies with request.)

22 Q. That's the insurance assignment, right?

23 A. Yes.

24 Q. Tell me who signed this.

25 A. It appears -- I don't recognize the

1 they bought the scanners and -- you know, I may have
2 had recollection or knew when some happened. If I
3 went through every UCC, I wouldn't have maybe dealt
4 with some of them.

5 Q. You would agree with me the termination date
6 here is August 18, 2011, right?

7 A. Which one?

8 Q. I'm sorry. On Mr. Daniels.

9 A. Yes.

10 Q. Go a few pages in like the third page.

11 we see there is another UCC-1 filing
12 statement on 9/8/2011 to AT&T?

13 A. Yes.

14 Q. Turn the page.

15 A. Okay.

16 Q. Another one in November, Greystone.

17 who is Greystone?

18 A. Greystone Capital was a lender.

19 Q. Okay.

20 A. With lines of credit.

21 Q. Turn the page again.

22 Another one to Greystone, right?

23 A. Yes.

24 Q. Turn the page again.

25 Another one to Greystone?

EXHIBIT 3

1 Q. When did you do that?

2 A. This e-mail -- well, let me back up. I'll
3 share what I believe the conversation was.

4 Subsequent to this long e-mail exchange, we
5 had a conference call, the Danielses and myself and
6 Candice, and so that very topic came up.

7 Clearly, my recollection a couple years later
8 was the deal points changed. So if it was filed, it
9 must have been an error, because at some point it
10 just changed the real estate. And, again, why --
11 that was really the time that I would have
12 communicated there would have been an error or
13 mistake or we're running on multiple tracks and Todd
14 Mitchell went down one track and we switched to the
15 other track and the first track never got --

16 Q. If that's true, if the deal changed to just
17 real estate, why was the UCC filed after the
18 Promissory Note dealing with the real estate?

19 A. See, that's where I don't have recollection.

20 Q. And the acknowledgment was sent a month after
21 that, after the real estate?

22 A. I just don't recall that. I recall the
23 notice being sent. I'm not saying that. But the why
24 part.

25 Q. Let's go down to Exhibit 11, sir. These are

EXHIBIT 3

1 your responses to my -- or to the Danielses' request
2 for admissions. Okay. I want to take you to No. 3.
3 No. 3 asks you to admit -- I'm sorry. Go ahead and
4 get there.

5 A. What number?

6 Q. No. 3. You got it?

7 A. Yes.

8 Q. "Admit that the UCC-1, attached hereto as
9 Exhibit 1, was filed with the Oregon Secretary of
10 State on behalf of you on February 25, 2011."

11 You denied that, right?

12 A. Yes.

13 Q. Why?

14 A. Because at that time that I filled this out,
15 I didn't have documents to refresh my memory like I
16 do now. Because, again, my recollection was even
17 filling this out was no, I don't think I had that
18 done. But clearly I did have that done.

19 Q. Right. You sent the filing to the Danielses?

20 A. Yes.

21 Q. And you didn't go back to look to remind
22 yourself Hey, I actually sent it to them?

23 A. The problem is I don't have a lot of the
24 e-mails from that time because they reside on a
25 different server.

EXHIBIT 3

1 Q. Then why didn't you say "I don't know"? Why
2 did you deny it? This is a denial. You said No,
3 that did not happen. You've got an attachment right
4 here. The UCC-1 is actually attached showing the
5 date on which it was filed and the debtor's name and
6 address, right?

7 A. Yes.

8 Q. Okay. That's good enough.

9 Then go to No. 4. Admit that the UCC-1 form
10 was terminated on August 18, 2011. You denied that,
11 too.

12 Why?

13 A. Because I'm not an expert on that document,
14 and at this point I've become a little more educated
15 in the last several months. But when we filled this
16 out, I wasn't an expert so I couldn't speak to
17 whether that's a real document or if that's really
18 the date. So if I can't affirm it, I'll just deny
19 it.

20 Q. Was that UCC-1 terminated on August 11, 2011?

21 A. Yes.

22 Q. By the way, that was attached as well, the
23 piece of paper that actually terminated on that date.

24 Go to No. 6. Admit that it was terminated by
25 your attorney, Todd Mitchell. You denied that.

EXHIBIT 3

1 why?

2 A. Again, because I have no recollection of it
3 so I couldn't answer it affirmatively.

4 Q. Why didn't you say "I don't know"?

5 A. Because I couldn't answer affirmatively. I
6 just -- I could have, I suppose.

7 Q. How about No. 9, Admit that the second
8 mortgage on the residence was not disclosed on the
9 Personal Financial Statement given to the Plaintiffs.
10 You denied it.

11 why?

12 A. Because I did include the balance therein.

13 Q. You included the balance, but that wasn't the
14 question. You didn't include the identity of the
15 mortgage, did you? Feel free to look at it. You
16 identified one mortgage. I believe it was
17 Countrywide.

18 A. Uh-huh.

19 Q. Correct?

20 A. Yes.

21 Q. No. 11. Admit that you intended Plaintiffs
22 to rely upon the representations made in your
23 Personal Financial Statement in connection with the
24 loan. So you denied that.

25 You did not intend them to rely upon that

1 were a partner with your husband in PCS, don't you?

2 A. Yes.

3 Q. Do me a favor and go to No. 11. You keep
4 taking the glasses off, and I keep making you put
5 them back on. This is responses to the Danielses'
6 Request For Admissions on behalf of you and your
7 husband. I'll ask you, first of all, what
8 involvement you had in answering these.

9 A. I'm sorry. What are you asking?

10 Q. I'm asking if you had any involvement with
11 responding to these requests.

12 A. I don't recall. I'm sorry.

13 Q. You'll notice in some of these that Mr.
14 Holman admits some and you deny them where it says
15 "Candice Holman denies" like on No. 1.

16 A. Yes.

17 Q. You don't remember being asked these
18 questions and whether or not you admit or denied
19 them?

20 A. I don't recall.

21 Q. Let's take a look at No. 1 for a moment. You
22 admitted you represented to Plaintiffs that your
23 personal residence at the address was worth \$775,000.
24 You denied that.

25 Why did you deny that, ma'am?

1 A. Because I don't know what it's worth.

2 Q. Okay. So you don't know. But you didn't say
3 you don't know. You said you deny, that it didn't
4 happen.

5 Did you mean you didn't know?

6 A. I -- I don't know. I'm sorry.

7 Q. I have the same questions -- you'll see a
8 bunch of these where he admits and you deny. You
9 denied that they were true.

10 My question is: Why did you deny them, I'm
11 wondering, if the answer is the same for all of them,
12 that you just didn't know?

13 A. Yes, I just didn't know.

14 Q. So you weren't necessarily saying they were
15 wrong; you were just saying "I don't know."

16 Am I accurate?

17 A. I don't recall this.

18 Q. Well, I'll tell you what. I want you to look
19 at Nos. 2 -- you looked at 1 -- Nos. 2, 7, 8, 10, and
20 13. Those are the ones in which your husbands
21 admits, but you deny. I'm wondering if your answer
22 to those is "I don't know" or whether you actually
23 denied those questions are true.

24 A. I don't know.

25 Q. I'm sorry?

1 A. I don't know.

2 Q. You don't know what? I'm sorry. You don't
3 know the answers to those questions?

4 A. No.

5 MR. BITNER: Okay. Pass the witness, Your
6 Honor.

7 THE COURT: You may cross-examine.

8 MR. HEATHERMAN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. HEATHERMAN:

11 Q. Mrs. Holman, we're looking at the same
12 documents here, Exhibit 11, same page. You've got it
13 right there.

14 MR. HEATHERMAN: Did I say request for
15 documents or request for admissions?

16 THE COURT: Request for admissions, Exhibit
17 11, starting on page 3.

18 MR. HEATHERMAN: I should have brought my
19 energy bar here.

20 MR. BITNER: But there are brownies outside.
21 I don't want to convert them. I don't know what
22 the conference room facilities include. I haven't
23 been educated.

24 THE COURT: Neither do I.

25 MR. BITNER: Apparently you're not going to

1 C E R T I F I C A T E

2

3

4 I, ALANE R. HARROLD, Registered Professional
5 Reporter and Certified Shorthand Reporter for the
6 State of Oregon, hereby certify that at the time and
7 place set forth in the caption hereof I reported in
8 Stenotype all testimony adduced and other oral
9 proceedings had in the foregoing matter; that
10 thereafter my notes were reduced to typewriting under
11 my direction, and that the foregoing transcript, pages
12 1 to 329, both inclusive, constitutes a full, true and
13 accurate record of all such testimony adduced and oral
14 proceedings had, and of the whole thereof.

15

16

17 WITNESS my hand and CSR seal at Bend, Oregon,
18 this 29th day of September, 2015.

19

20

21

22

23

24

25


Alane R Harrold
ALANE R. HARROLD
Certified Shorthand Reporter
Certificate No. 98-0354
Expires: 12/31/2017

HARROLD COURT REPORTING SERVICE (541) 771-8251
EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:

JAMES JOEL HOLMAN, CANDICE

EVANGELINE HOLMAN,

Debtors,

Case No. 14-35381-rld7

DWIGHT DANIELS, LAURA DANIELS,

Plaintiffs,

vs.

JAMES JOEL HOLMAN,

CANDICE EVANGELINE HOLMAN,

Defendants.

DEPOSITION OF JAMES JOEL HOLMAN

Volume 1, Pages 1 to 154

Taken on behalf of the Plaintiffs

Tuesday, July 7, 2015

EXHIBIT 4

132

1 A. Not that I know of. I'm not a realtor.

2 (EXHIBIT NO. 18, Defendants' Response to
3 Plaintiffs' First Request for Admissions to
4 Defendants, marked.)

5 Q. We're almost done. I promise.

6 These are your responses to the plaintiffs'
7 first request for admissions. You can read this one a
8 little better. Go to page 3.

9 Are you on page 3 with me?

10 A. Yes.

11 Q. Okay. Request for admission number 3, "Admit
12 that the UCC-1 was filed with the Secretary of State on
13 behalf of you on February 25th, 2011." You deny that.

14 Are you denying that it was filed on behalf of
15 you? Is that the denial?

16 A. So the denial is -- what do you mean on behalf
17 of me? I don't know what the legal term "behalf of me"
18 means. I'll tell you what I believe it means.

19 Q. Sure.

20 A. What I'm denying is that it was filed and it
21 was supposed to be filed as part of this deal. I'm saying
22 no.

23 Q. Well, let me ask you this because the word
24 "supposed to" is not here.

25 I literally asked you to admit that it was

EXHIBIT 4

1 filed with the Oregon Secretary of State on behalf of you
2 on February 25th. You denied that. I'm wondering why.

3 A. I would admit that it was filed based on what
4 we provided. What I'm denying is on behalf of me or at my
5 direction because I don't recall that aspect.

6 Q. Got it. You're denying that it happened or
7 you --

8 A. No, I'm not denying that it happened. I don't
9 recall actually authorizing that. That part I'm denying.

10 Q. Got it. All right.

11 Number 4 under that, "Admit that the UCC-1 was
12 terminated on August 18th, 2011." You denied that.

13 Why did you deny that one?

14 A. Just because I didn't have personal knowledge
15 of it.

16 Q. So you didn't know the answer?

17 A. I didn't know the answer.

18 Q. Would you agree with me that it was terminated
19 on August 18th, 2011?

20 A. Without going back and looking at it, I
21 believe so, yes.

22 Q. Okay. Well, let's put it this way: Would you
23 agree that the form is the best evidence of when it was
24 terminated?

25 A. Yes.

EXHIBIT 4

1 Q. Okay. Number 6, "Admit that the UCC-1 was
2 terminated by your attorney, Todd Mitchell."
3 Is that an I don't know or is that a no, he
4 did not terminate that?

5 A. That is an I don't know.

6 Q. Okay.

7 A. Although based on, you know, looking at it
8 today, I think -- I'd have to look at it.

9 Q. I'll represent to you his name is not on it.

10 A. Okay.

11 Q. There's a reference number, but his name is
12 not on it.

13 A. Then I don't know.

14 Q. Okay. Number 9, "Admit that the second
15 mortgage on the residence in Mulino was not disclosed on
16 the Personal Financial Statement." You deny that.

17 You would agree with me that there was only
18 one mortgagor identified on the personal financial
19 statement, wouldn't you?

20 A. I did include what I believed to be the
21 combined balances.

22 Q. Right.

23 A. I combined them.

24 Q. But you only identified one mortgagor.

25 A. I think there was only one box.

EXHIBIT 4

153

1 STATE OF OREGON)

2) ss

3 COUNTY OF MULTNOMAH)

4

5 I, Heather M. Ingram, Certified Shorthand Reporter for
6 the State of Oregon, do hereby certify that JAMES JOEL
7 HOLMAN personally appeared before me at the time and place
8 mentioned in the caption herein; that the witness was by me
9 first duly sworn under oath and examined upon oral
10 interrogatories propounded by counsel; that said
11 examination, together with the testimony of said witness,
12 was taken down by me in stenotype and thereafter reduced to
13 typewriting; and, that the foregoing transcript, pages 1
14 through 152, both inclusive, constitutes a full, true and
15 accurate record of said examination of and testimony by
16 said witness, and of all other oral proceedings had during
17 the taking of said deposition, and of the whole thereof.

18 Witness my hand at Portland, Oregon, this 13th day of
19 July, 2015.

20

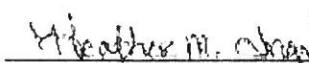
21

22

23

24

25




Heather M. Ingram

Oregon CSR No. 93-0279

Washington CSR No. 2188

EXHIBIT 4

CERTIFICATE OF SERVICE

I hereby certify that I served the attached **DECLARATION OF R. HUNTER BITNER, II IN SUPPORT OF PLAINTIFFS' MOTION FOR COSTS AND ATTORNEY'S FEES REGARDING FAILURE TO ADMIT** on the following person(s) on the date indicated below:

Paul B. Heatherman
Law Offices of Paul Heatherman PC
250 NW Franklin Ave, #402
Bend, OR 97701
Of Attorneys for Debtors-Defendants

By the following indicated method(s):

- By **emailing** full, true, and correct copies thereof to say attorney to the email address noted above, which is the last known email address for said attorney, on the date set forth below.
- By notice of electronic filing using the PACER ECF filing system.
- By causing full, true and correct copies thereof to be **mailed** to the attorney(s) at the attorney(s) last-known office address (as) listed above on the date set forth below.

DATED: October 20, 2015.

SLINDE NELSON STANFORD

By: /s/ R. Hunter Bitner, II
Darian A. Stanford, OSB No. 994491
R. Hunter Bitner II, OSB No. 011146
Of Attorneys for Dwight and Laura Daniels